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CLERK US DISTRICT COURT
DISTRICT OF NEVADA

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CV-S-03-0396-KJD-LRL

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13 UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

14 FEDERAL TRADE COMMISSION,

15 Plaintiff,

16 v.

17 ERIC STETZEL,

18 Defendant.

19 COMPLAINT FOR
20 PERMANENT INJUNCTION
AND OTHER EQUITABLE
RELIEF

21 Plaintiff, the Federal Trade Commission ("FTC" or "the Commission"), for its
22 complaint alleges:

23 1. The FTC brings this action under Sections 13(b) and 19 of the Federal
24 Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, to secure preliminary
25 and permanent injunctive relief, rescission of contracts, restitution, disgorgement, and
26 other equitable relief for defendant's violations of Section 5(a) of the FTC Act, 15
27 U.S.C. § 45(a), and the FTC's "Mail or Telephone Order Merchandise Rule" (the "Rule"),
16 C.F.R. Part 435.

COMPLAINT

DEFENDANT'S BUSINESS ACTIVITIES

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2 7. Since at least August 2002, defendant Stetzel has offered computers,
3 computer-related equipment, and other merchandise for sale on Internet auction web sites.

4 8. An Internet auction web site is an online forum that facilitates
5 communications between would-be buyers and sellers of merchandise. Sellers use the
6 Internet auction web site to advertise the merchandise they seek to sell. Auctions are
7 conducted on the Internet auction web-site with would-be buyers sending bids through
8 electronic mail to the web site. Buyers "win" by submitting the highest bid before the
9 auction concludes. At the conclusion of the auction, buyers and sellers typically
10 communicate with each other via electronic mail about the terms of payment and delivery.
11 Once the terms are agreed upon, the buyer sends the payment to the seller, usually in the
12 form of a personal check or money order, and the seller ships the merchandise to the
13 buyer.

14 9. Defendant Stetzel has accepted payment from consumers who have
15 successfully bid for the merchandise he offered for sale on an Internet auction web site.
16 These consumers have each paid between \$102 and \$490 to defendant Stetzel for the
17 merchandise he offered for sale.

18 10. In numerous instances, after receiving payment from the auction winner,
19 defendant Stetzel has failed to provide the offered merchandise. Further, in numerous
20 instances, defendant Stetzel has failed to inform consumers that the merchandise they
21 paid for will not be delivered on time, if at all, and has failed to offer them a refund.

22 11. Stetzel has defrauded numerous consumers, causing tens of thousands of
23 dollars in consumer injury.
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VIOLATION OF SECTION 5 OF THE FTC ACT

COUNT I

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3 12. In the course of offering computers, computer-related products, and other
4 merchandise for sale via Internet auction web sites, defendant Stetzel has represented,
5 expressly or by implication, that the consumers who submit the highest bids for his
6 merchandise and send him the agreed-upon payment will receive the offered
7 merchandise.

8 13. In truth and in fact, in numerous instances, consumers who submit the
9 highest bids for defendant Stetzel's merchandise and send him the agreed-upon payment
10 do not receive the offered merchandise.

11 14. Therefore, defendant Stetzel's representation set forth in Paragraph 12 is
12 false and misleading and constitutes a deceptive act or practice in violation of Section
13 5(a) of the FTC Act, 15 U.S.C. § 45(a).

THE MAIL OR TELEPHONE ORDER MERCHANDISE RULE

15 15. The FTC promulgated the Mail or Telephone Order Merchandise Rule, 16
16 C.F.R. Part 435, on October 22, 1975 ("the Rule"), and revised the Rule on September 21,
17 1993. The revised Rule became effective on March 1, 1994, and has remained in full
18 force and effect since that time.

19 16. The Rule applies to sales in which the buyer has ordered merchandise from
20 the seller by mail or directly or indirectly by telephone, such as by fax machines and
21 computers. 16 C.F.R. §§ 435.1 and 435.2 (a) and (b).

22 17. The Rule prohibits a seller from soliciting any order for the sale of
23 merchandise to be ordered by the buyer through the mail or telephone, unless, at the time
24 of the solicitation, the seller has a reasonable basis to expect that it will be able to ship
25 any ordered merchandise to the buyer within the time stated in the solicitation, or, if no
26 time is stated, within thirty days of the completion of the order. 16 C.F.R. § 435.1(a)(1).

1 18. The Rule requires that the seller follow certain procedures if merchandise
2 ordered through the mail or by telephone will not be shipped within the applicable time
3 limit. Specifically, 16 C.F.R. § 435.1(b)(1) requires that, when there is a shipping delay,
4 the seller must, prior to the expiration of the applicable time, offer the buyer an option
5 either to agree to the delay or to cancel the order and receive a prompt refund, as defined
6 in 16 C.F.R. § 435.2(f).

7 19. The Rule also requires that a seller deem an order canceled and make a
8 prompt refund to the buyer whenever the seller has failed to ship within the specified time
9 period and has failed to offer the buyer the option to consent to further delay or to cancel
10 the order. 16 C.F.R. § 435.1(c).

11 20. Pursuant to Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), and 16
12 C.F.R. § 435.1, violations of the Rule constitute unfair or deceptive acts or practices in or
13 affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

14 **VIOLATIONS OF THE MAIL OR TELEPHONE ORDER**
MERCHANDISE RULE

15
16 **COUNT II**

17 21. In numerous instances, defendant Stetzel has solicited orders for the sale of
18 merchandise to be ordered by the buyer indirectly through the telephone without a
19 reasonable basis to expect that he will be able to ship any ordered merchandise to the
20 buyer within the time stated in the solicitation, or, if no time was clearly and
21 conspicuously stated, within thirty days of receipt of a properly completed order, thereby
22 violating 16 C.F.R. § 435.1(a)(1).

23 **COUNT III**

24 22. In numerous instances, after soliciting orders for the sale of merchandise
25 ordered by the buyer indirectly through the telephone and being unable to ship
26 merchandise within the applicable time as set out in Section 16 C.F.R. § 435.1(a)(1),
27 defendant Stetzel has failed to offer to the buyer, clearly and conspicuously and without
prior demand, an option either to consent to a delay in shipping or to cancel the order and

1 receive a prompt refund, thereby violating 16 C.F.R. § 435.1(b)(1).

2 **COUNT IV**

3 23. In numerous instances, defendant Stetzel has failed to make a "prompt
4 refund," as that term is defined in 16 C.F.R. § 435.2(f), to buyers when such refunds were
5 required by 16 C.F.R. § 435.1(c), thereby violating 16 C.F.R. § 435.1(c).

6 **CONSUMER INJURY**

7 24. Consumers throughout the United States have suffered substantial monetary
8 loss as a result of defendant's unlawful acts or practices. Absent injunctive relief by this
9 Court, defendant Stetzel is likely to continue to injure consumers and harm the public
10 interest.

11 **THIS COURT'S POWER TO GRANT RELIEF**

12 25. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to
13 grant injunctive and other ancillary relief, including redress, disgorgement and restitution,
to prevent and remedy any violations of any provision of law enforced by the FTC.

14 26. Section 19 of the FTC Act, 15 U.S.C. § 57b, authorizes the Court to grant
15 such relief as the Court finds necessary to redress injury to consumers or other persons
16 resulting from defendant's violations of the Mail or Telephone Order Merchandise Rule.

17 27. This Court, in the exercise of its equitable jurisdiction, may award other
18 ancillary relief to remedy injury caused by defendant Stetzel's law violations.
19

20 **PRAYER FOR RELIEF**

21 WHEREFORE, plaintiff requests that this Court, as authorized by Sections 13(b)
22 and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, and pursuant to its own equitable
23 powers:

24 1. Award plaintiff such temporary and preliminary injunctive and ancillary
25 relief as may be necessary to avert the likelihood of consumer injury during the pendency
26 of this action and to preserve the possibility of effective final relief, including, but not
27 limited to, temporary and preliminary injunctions and an order freezing defendant
Stetzel's assets;

1 receive a prompt refund, thereby violating 16 C.F.R. § 435.1(b)(1).

2 **COUNT IV**

3 23. In a numerous instances, defendant Stetzel has failed to make a "prompt
4 refund," as that term is defined in 16 C.F.R. § 435.2(f), to buyers when such refunds were
5 required by 16 C.F.R. § 435.1(c), thereby violating 16 C.F.R. § 435.1(c).

6 **CONSUMER INJURY**

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14 26. Section 19 of the FTC Act, 15 U.S.C. § 57b, authorizes the Court to grant
15 such relief as the Court finds necessary to redress injury to consumers or other persons
16 resulting from defendant's violations of the Mail or Telephone Order Merchandise Rule.

17 27. This Court, in the exercise of its equitable jurisdiction, may award other
18 ancillary relief to remedy injury caused by defendant Stetzel's law violations.
19

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21 WHEREFORE, plaintiff requests that this Court, as authorized by Sections 13(b)
22 and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, and pursuant to its own equitable
23 powers:

24 1. Award plaintiff such temporary and preliminary injunctive and ancillary
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26 of this action and to preserve the possibility of effective final relief, including, but not
27 limited to, temporary and preliminary injunctions and an order freezing defendant
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2. Permanently enjoin defendant Stetzel from violating the FTC Act and the Mail or Telephone Order Merchandise Rule as alleged herein;

3. Award such relief as the Court finds necessary to redress injury to consumers resulting from defendant Stetzel's violations of the FTC Act and the Mail or Telephone Order Merchandise Rule, including but not limited to, rescission of contracts, the refund of monies paid, and the disgorgement of ill-gotten monies; and

4. Award plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

Dated: 4/7, 2003

Respectfully Submitted,
WILLIAM E. KOVACIC
General Counsel


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JANICE L. CHARTER
DAVID M. NEWMAN
BLAINE T. WELSH

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Federal Trade Commission